

# **Exhibit I**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

GLORIA ARTHUR, on behalf of  
herself and all others similarly  
situated,

Plaintiff,

v.

TRAVELERS INDEMNITY  
COMPANY and THE STANDARD  
FIRE INSURANCE COMPANY,

Defendants.

Civil Action No. 09-7332

Judge Carl J. Barbier

**[PROPOSED] FINAL ORDER AND JUDGMENT CERTIFYING THE CLASS FOR  
PURPOSES OF SETTLEMENT, APPROVING OF CLASS ACTION SETTLEMENT,  
AND DISMISSING THE ACTION WITH PREJUDICE**

A Fairness Hearing was held before this Court on \_\_\_\_\_, 2010, to consider, among other things, whether the Settlement Agreement dated September 11, 2009 (the "Settlement Agreement") between the Settlement Class Representatives on behalf of themselves and the Settlement Class (the "Plaintiffs"), and defendant Travelers Indemnity Co. ("Travelers") represents a fair, reasonable and adequate compromise of the Action, and the amount to be paid to Class Counsel as fees and litigation costs for prosecuting the Filed Actions.

Having considered the evidence and argument submitted by the Parties, and the objections of those persons listed on Exhibit A hereto,

**GOOD CAUSE APPEARING, IT IS HEREBY ORDERED, ADJUDGED AND  
DECREED THAT:**

1. This Order incorporates by reference the definitions in the Settlement Agreement, and all capitalized terms used in this Judgment will have the same meanings as set forth in the Settlement Agreement, unless otherwise defined herein.

2. This Court has jurisdiction over the subject matter of this action, the Settlement Class Representatives, the Settlement Class and Travelers. Venue is proper in this district.

3. The Joint Motion for Final Approval of Settlement, and for Entry of Final Judgment and Order of Dismissal is GRANTED.

4. The Court finds that the Settlement Agreement is the product of good faith arms' length negotiations by the Parties, each of whom was represented by experienced counsel.

5. The Court finds that the class proposed for purposes of the settlement meets the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3), and hereby certifies a settlement class as follows:

All persons, including but not limited to their assignees, subrogees, and lienholders (including the State of Louisiana), who sustained any loss or damage of any kind, arising in any way out of damage, destruction, or harm to property in the State of Louisiana related in any way to Hurricanes Katrina and/or Rita, and who, at the time of the loss, had any rights under a policy of insurance from Travelers. Loss or damage includes but is not limited to: (1) loss or damage to real or personal property; (2) the incurring of additional living or business expenses; or (3) the loss of any business or other income. The class excludes all persons, other than the State of Louisiana as plaintiff in the Road Home Litigation, who have a suit pending against Travelers as of the date of the Preliminary Approval Order related in any way to losses stemming from Hurricanes Katrina and/or Rita. The class also excludes class counsel, members of the judiciary, their administrative staff and any other personnel who may cause a member of the Louisiana bench to be unable to preside over this action. Notwithstanding the above, the class does not include the State of Louisiana as assignee of claims by non members of the class.

6. Specifically, the Court finds that the Class described above satisfies Fed. R. Civ. P. 23(a) and Rule 23 (b)(3) for settlement purposes:

### Rule 23(a)

- (a) Numerosity: Numerosity is established in that the size of the proposed class is sufficiently large to make joinder impractical, given the relevant circumstances. Fed. R. Civ. P. 23(a); *see, e.g., Turner v. Murphy Oil USA, Inc.*, 234 F.R.D. 597 (E.D. La. 2006) (finding numerosity requirement met in class action suit arising from post-Hurricane Katrina oil spill where class members were dispersed throughout the country and the number of impacted properties exceeded 1,800). In this settlement, the proposed class encompasses thousands of policyholders who have asserted claims or potential claims against Travelers arising from Hurricanes Katrina and Rita. Thus, the Rule 23(a)(1) numerosity requirement has been met.
- (b) Commonality: Generally, the commonality requirement is easily met, provided that at least one common question of law or fact exists. *See* Fed. R. Civ. P. 23(a)(2); *James v. City of Dallas*, 254 F.3d 551, 570 (5th Cir. 2001). Here, there are many common questions of law and fact. For example, the insurance policies have similar or identical language, which raises common issues of contract interpretation and the application of state law to the policies. Moreover, Travelers' valuation practices do not vary by individual policyholder; consequently, the application of Louisiana law to Travelers' conduct raises common questions. Finally, the efficient proximate cause of the inundation of the Policyholders' properties, including the fault of third parties, and the propriety of the declaratory relief are common questions across the putative class. Such common questions satisfy Rule 23(a)(2)'s commonality requirement.
- (c) Typicality: The proposed class representatives' claims arise from the same course of conduct and share the same legal theory as the claims of the Settlement Class Members. Furthermore, the Settlement Class Representatives will advance the interests of all class members. The Settlement Class Representatives' claims are typical of those of the proposed Class and satisfy Rule 23(a)(3).
- (d) Adequacy: The Settlement Class Representatives assert claims representative of the claims of the entire class with regard to claims arising out of Hurricanes Katrina and/or Rita. As such, even though the claims may not be identical to every claim of every putative Class member, the Settlement Class Representatives can adequately represent the putative Class.

The adequacy factor also considers Class Counsel. In this case, Class Counsel regularly engage in complex litigation similar to the present case and have dedicated substantial resources to the prosecution of this matter. The adequacy requirement is satisfied.

### Rule 23(b)(3)

Once the subsection (a) prerequisites are satisfied, Federal Rule of Civil Procedure 23(b)(3) provides that a class action can be maintained where the questions of law and fact common to members of the class predominate over any questions affecting only individuals, and the class action mechanism is superior to the other available methods for the fair and efficient adjudication of the controversy. Fed. R. Civ. P. 23(b)(3); *Steering Committee v. Exxon Mobil Corp.*, 461 F.3d 598, 601 (5th Cir. 2006). In this case and in the context of the proposed settlement, common issues of fact and law predominate. With respect to the proposed class, common questions of fact and law predominate over the questions affecting only individual class members, particularly with respect to matters of policy interpretation, application of Louisiana law to the subject policies, application of

Louisiana law to Travelers' conduct, the history and significance of specific policy provisions, Travelers' policies, practices, and procedures as they apply to the class' claims, the efficient proximate cause of the inundation of the Policyholders' properties, including the fault of third parties, the propriety of the declaratory relief sought by the class, and whether the class members' claims are time-barred.

In addition, the instant class action is superior to any other method available to fairly, adequately, and efficiently resolve the class members' claims. Absent a class action, most members of the class would find the cost of litigating their claims to be prohibitive and such multiple individual actions would be judicially inefficient. Also, because the parties have agreed to settle the action, the Court need not consider issues of manageability relating to trial. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (citation omitted) (“[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial”). Accordingly, common questions predominate and a class action is the superior method of adjudicating this controversy.

7. The Court makes the above findings set forth above regarding certification of the Class only for the purposes of settlement.

8. As part of the Settlement Agreement, the Settlement Class Members are forever releasing and discharging any claims for monetary damages of any type, whether compensatory, restitutionary, punitive or otherwise, as set forth in Settlement Agreement and that the Settlement Class Members will be forever bound by this Final Order and Judgment including for the Released Claims as against the Released Entities. The Court finds that this relief is enforceable and binding on the Class and satisfies the right of due process under the provisions of Rule 23(b)(3) because this Court provided to the Class notice of the proposed settlement and the right of Class Members to exclude themselves from the Class pursuant to the Court's plenary powers under Rule 23(d)(2) and 23(d)(5).

9. The Court reconfirms the appointment of the Settlement Class Representatives.

10. The Court reconfirms the appointment of Calvin C. Fayard Jr., N. Frank Elliot III, Frank C. Dudenhefer, Wanda Edwards, and Joseph M. Bruno as Class Settlement Counsel for the Settlement Class.

11. The Court approves the Settlement Agreement, on file with the Court as Exhibit A to the Joint Motion for Preliminary Approval of Class Settlement dated \_\_\_\_\_, as being fair, adequate, and reasonable and in the best interests of the Class, satisfying Rule 23(e) and the fairness and adequacy factors of this Circuit. In particular, the Court finds that:

(a) **Fairness, Adequacy, and Reasonableness of the Proposed Settlement:**

The Court finds that the Settlement Agreement is fair, adequate, and reasonable. The facts and circumstances of the negotiations set forth in counsels' declarations and papers demonstrate that there has been considerable arms' length bargaining in this case. Under Fifth Circuit law, "[t]he gravamen of an approvable proposed settlement is that it be 'fair, adequate, and reasonable and is not the product of collusion between the parties.'" *Newby v. Enron Corp.*, 394 F.3d 296, 301 (5th Cir. 2004). The following factors must be considered: "(1) evidence that the settlement was obtained by fraud or collusion; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the litigation and available discovery; (4) the probability of plaintiffs' prevailing on the merits; (5) the range of possible recovery and certainty of damages; and (6) the opinions of class counsel, class representatives, and absent class members." *Id.* The Fifth Circuit has further stated that "formal discovery is not necessary as long as (1) the interests of the class are not prejudiced by the settlement negotiations and (2) there are substantial factual bases on which to premise settlement." *Id.* at 306.

1. **Comparison of Settlement With Likely Result of Litigation:**

Although Class Members have consistently asserted their confidence in the strength of their case, this is complex litigation for which the outcome is uncertain and unpredictable. Courts in the Fifth Circuit have routinely refused to certify classes of policyholders seeking to recover for claims based on Hurricanes Katrina and/or Rita, finding common issues of fact and law did not predominate. Even if Plaintiffs could succeed in certifying a class, Class Members would have to succeed on several complex and hotly disputed legal and factual issues. The relief contemplated in the Settlement Agreement is fair, adequate, and reasonable.

2. **Reaction of the Class to the Settlement:**

Class members had until \_\_\_\_\_ to opt-out of the Class and \_\_\_\_\_ to object. As a result of the extensive Notice program ordered by the Court, there have been \_\_ opt-outs and \_\_ objections filed with the Court. The overall reaction to the settlement has been positive. Given the size of the class, the number of objections and opt-outs from the class is small.

3. **State of the Litigation:**

Some of the Filed Actions have been pending for over three years. During that time (and indeed even well before the instant case was brought), Class Settlement Counsel engaged in discovery and investigation, and such work has generated significant information about the prospects for success in this litigation. On the other hand, although there has been extensive motion practice and the parties have engaged in both formal and informal discovery to ensure that the settlement is fair, adequate, and reasonable, there remains substantial litigation ahead, including

additional motion practice, trial preparation, and the trial itself. Indeed, litigation of this complex case through trial would require millions of dollars in expenses. Given that the Parties have undertaken sufficient discovery to ensure the fairness, reasonableness, and adequacy of the settlement, expenditure of these resources would be wasteful and unnecessary. The state of the litigation therefore weighs in favor of approval of the settlement.

4. Quality of Counsel:

Class Settlement Counsel are very well-qualified and experienced. Class Settlement Counsel regularly engage in complex litigation similar to the present case and have dedicated substantial resources to the prosecution of this matter. The experience and skill of all counsel involved weighs in favor of final approval of this settlement.

5. Conduct of Negotiations:

Class Settlement Counsel and Travelers' Counsel have engaged in extensive, arms-length negotiations, facilitated by the Louisiana Attorney General's Office. The complexity and duration of these negotiations weighs in favor of final approval of this settlement.

6. Case Prospects, Including Risk, Complexity, Expense, and Duration:

The Filed Actions have the potential to impose enormous litigation costs on all of the Parties. Indeed, although the ultimate result of motions for class certification and trial cannot be foreseen, absent a settlement, an expensive, complex and time-consuming process is assured. In light of the high stakes involved, a lengthy and costly appeal is certain to follow regardless of the outcome at trial. Thus, the complexity, expense and likely duration of the litigation weighs heavily in favor of final approval of this settlement.

12. Any and all objections to the Settlement Agreement and Settlement Class

Counsel's request for attorney's fees and costs and expenses, if any, have been considered and are hereby found to be without merit and are overruled.

13. The Court finds that the notification provided for in the order preliminarily

approving class settlement has been provided to the Settlement Class and the notice provided to the Settlement Class constituted the best notice practicable under the circumstances, and were in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, the United States Constitution and any other applicable law. The Notice apprised the members of the Settlement Class of the pendency of the litigation; of all material elements of the proposed settlement, including but not limited to the relief afforded the Settlement Class under

the Settlement Agreement; of the res judicata effect on members of the Settlement Class and of their opportunity to object to, comment on, or opt-out of the settlement; of the identity of Settlement Class Counsel and of information necessary to contact Settlement Class Counsel; and of the right to appear at the Fairness Hearing. Full opportunity has been afforded to members of the Settlement Class to participate in this Fairness Hearing. Accordingly, the Court determines that all members of the Settlement Class are bound by this Judgment in accordance with the terms provided herein.

14. The Court holds that the notice provisions set forth under the Class Action Fairness Act, 28 U.S.C. § 1715, were complied with in this case.

15. The “Released Claims” (as defined below) of any and all Settlement Class Members are HEREBY DISMISSED WITH PREJUDICE against all “Released Entities” (as defined below):

“Released Claims” means any and all known or unknown claims, demands, actions, suits, causes of action (under the common, or civil law, statutes, or regulations), damages whenever incurred whether compensatory or exemplary, liabilities of any nature or under any theory whatsoever, including costs, expenses, penalties and attorneys’ fees, in law or equity, that any Releasor, whether or not they object to the settlement, ever had or now has, directly, representatively, derivatively or in any capacity, arising out of any conduct, events, or transactions of the Released Entities related in any way to any alleged damage, destruction, or harm to real or personal property, alleged additional living or business expenses, or alleged losses of business or other income in the State of Louisiana as a result of Hurricanes Katrina and/or Rita, including but not limited to claims for breach of contract, extracontractual damages, penalties, punitive damages, and/or attorneys fees under any legal theory, including, but not limited to La. Civ. Code Arts. 1997 and 1998, La. R.S. 22:1892 (previously codified at La. R.S. 22:658) and/or 22:1973 (previously codified at La. R.S. 22:1220).

“Released Entities” means Travelers Indemnity Co. and its present and former subsidiaries, affiliates, divisions, associates, agents, successors, predecessors, assignors, assignees, and/or assigns and each of their respective present, former or future, officers, directors, shareholders, agents and employees.

16. By entry of this Final Order and Judgment, each Settlement Class Member, and all other persons and entities claiming by, through, or on behalf of, a Settlement Class Member, are



hereby forever barred and enjoined from commencing, filing, initiating, instituting, prosecuting, maintaining, or consenting to any action against the Released Entities with respect to the Released Claims and forever discharge and hold harmless the Released Entities of and from any and all Released Claims which the Class Member has or may hereafter have.

17. The terms of the Settlement Agreement, this Final Order and Judgment, and the Preliminary Approval Order shall be binding on the Parties and all Settlement Class Members, as well as their heirs, executors, administrators, successors and assigns and shall have res judicata and other preclusive effect in all pending and future claims, lawsuits, or other proceedings maintained by or on behalf of any such persons.

18. Within thirty (30) days following the Effective Date, Travelers shall pay the Settlement Fund to be deposited in an escrow account to be held by Settlement Class Counsel for the benefit of the Settlement Class ("Class Escrow Account").

19. The Court holds that the Class Escrow Account established to hold the Settlement Fund is approved in order that it may be a Qualified Settlement Fund for federal tax purposes pursuant to Treas. Reg. § 1.468B-1.

20. Travelers shall not be liable for, and shall have no responsibility for payment of, any Settlement Class Counsel's attorney's fees or costs. The Settlement Class is liable for the first \$75,000 in expenses associated with the provision of notice to the members of the Settlement Class, including any fees for professional services rendered by any person providing notice. Travelers advanced this money from the \$1,000,000 payment described in Section II(9)(A)(1) of the Settlement Agreement. Travelers is liable for all notice expenses in excess of this amount. Except as provided by the previous sentence, Travelers has no obligation to pay any amount beyond the Settlement Fund. The Settlement Class is liable for all other costs associated with the administration of the settlement embodied by this Agreement.

21. Within 5 court days of Travelers' deposit of the Settlement Fund in the Class Escrow Account, Counsel for the Plaintiff Class Representatives in each of the Filed Actions shall file a Notice of Dismissal of Travelers With Prejudice in the form annexed hereto as Exhibit B. No finding, judgment, adjudication, or verdict rendered in the Filed Actions after the date of this Final Order and Judgment, or rendered by any Court and/or jury in any proceeding or action after the claims in each of those actions were stayed as to Travelers shall be binding or have any precedential effect on Travelers.

22. Neither this Judgment nor the Settlement Agreement, nor any of its terms or provisions nor any of the negotiations or proceedings connected with it, shall be: (1) construed as an admission or concession by Travelers of the truth of any of the allegations in the Actions, or of any liability, fault or wrongdoing of any kind; or (2) construed as an admission by Plaintiffs or the Settlement Class as to any lack of merit of the claims or this action.

23. If the Effective Date, as defined in the Settlement Agreement, does not occur for any reason whatsoever, this Final Judgment and the Preliminary Approval Order shall be deemed vacated and shall have no force and effect whatsoever.

24. If the Settlement Agreement is terminated, (a) the Agreement shall have no effect on the rights of the Parties or the Class Members (i) to take any action in support of or in opposition to class certification in the Filed Actions, or (ii) to prosecute or defend the Filed Actions or any other action, and (b) subject expressly to the reservation and preservation of rights and defenses and all Parties and Class Members shall be restored to their respective positions immediately prior to the date the Parties signed the Settlement Agreement. In such event, the Settlement Agreement and all negotiations, proceedings, documents prepared and statements made in connection herewith shall be without prejudice to the Parties, and shall not be deemed or

construed to be an admission or confession by or against any Party of any fact, matter, or proposition of law, whether in the Filed Actions or otherwise.

25. The Settlement Agreement, the evidence introduced at the preliminary hearing on the Joint Motion, or that may be introduced into evidence at the Final Approval Hearing, or in connection with any related motion (including any motion to enjoin or stay any of the Filed Actions), and all negotiations, proceedings, documents prepared and statements made in connection herewith, shall be without prejudice to Plaintiffs and Travelers, and shall not (i) be deemed or construed to be an admission or confession by or against any Party of any fact, matter, or proposition of law; (ii) constitute, be construed as, or be admissible as evidence of an admission by or against any Person, including any Party or Settlement Class Member, that this Action or any other proposed or certified class action, can be or is properly certified for trial or litigation purposes under Article 591, *et seq.*, of the Louisiana Code of Civil Procedure, Rule 23 of the Federal Rules of Civil Procedure, or any similar statute or rule; (iii) constitute, be construed, be offered, or received into evidence as an admission of the validity of any claim or defense, or the truth of any fact alleged or other allegation in the Action, the Filed Actions, or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Travelers, or (iv) be used to establish a waiver of any defense or right, or to establish or contest jurisdiction or venue.

26. If the Settlement Agreement becomes void or is terminated for any reason, any amounts then remaining in the Class Escrow Account shall be paid to Defendants within fifteen days of the event voiding the Settlement Agreement.

27. Prior to this Final Order and Judgment becoming a Final Judgment, the Settlement Agreement may, with approval of the Court, be modified by written agreement of Travelers

counsel and Settlement Class Counsel in their discretion without giving any additional notice to the Class, provided that such modifications are not materially adverse to the Class.

28. Subsequent to this Final Order and Judgment becoming a Final Judgment, the Settlement Agreement may, with approval of the Court, be modified by written agreement of Travelers counsel and Settlement Class Counsel in their discretion without giving any additional notice to the Class, provided that such modifications do not limit the rights of the Class Members under the Class Settlement Agreement.

29. Pursuant to the All Writs Act, 28 U.S.C. §1651, this Court shall retain the authority to issue any order necessary to protect its jurisdiction from any action, whether in state or federal court, that threatens to undermine the settlement in this case and this Final Order.

30. FINAL JUDGMENT is hereby ENTERED directing Travelers to comply with the terms of the Settlement Agreement as herein described.

31. FINAL JUDGMENT is hereby ENTERED dismissing with prejudice all Released Claims of the Class against all Released Entities as herein described and dismissing Travelers from this Action.

32. Pursuant to FRCP 54(b), the Court determines that there is no just cause for delay and expressly DIRECTS the ENTRY OF JUDGMENT on all issues contained in this Order. Accordingly, this Final Order and Judgment is immediately appealable.

IT IS SO ORDERED.

DATED:

This \_\_\_\_ day of \_\_\_\_\_, 2010

\_\_\_\_\_  
Honorable Stanwood R. Duval, Jr.  
United States District Court

**Exhibit**

Exhibit A

List of Objections Filed and Considered